

URGENT ACTION

US SUPREME COURT CLEARS PATH FOR EXECUTION

Georgia death row inmate Troy Davis is facing the possibility of his fourth execution date in four years after the US Supreme Court dismissed his appeal on 28 March. Doubts persist about his guilt in the crime for which he was sentenced to death two decades ago.

Troy Davis was sentenced to death in 1991 for the murder of police officer Mark Allen MacPhail in Savannah, Georgia in 1989. No physical evidence directly links Davis to the murder – no murder weapon was ever found. The case against Davis primarily rested on witness testimony. Since his trial, seven of nine key witnesses have recanted or changed their testimony, some alleging police coercion.

In 2009, the US Supreme Court ordered a federal evidentiary hearing to review Troy Davis' innocence claim. At the hearing in June 2010, US District Court Judge William Moore addressed not whether the state could demonstrate a watertight case against Troy Davis, but whether Davis could show "by clear and convincing evidence that no reasonable juror would have convicted him in the light of the new evidence" that had emerged since his 1991 murder trial. Under this "extraordinarily high" standard, Judge Moore wrote, "Mr Davis is not innocent". Elsewhere in his ruling, however, he acknowledged that the new evidence presented by Troy Davis cast "some additional, minimal" doubt on his conviction, and that the state's case was not "ironclad". In 1991, the jury had found Troy Davis guilty "beyond a reasonable doubt," Judge Moore noted, "but not to a mathematical certainty".

On 28 March, the US Supreme Court refused to take the Davis case, clearing the way for Georgia to set an execution date. Troy Davis was less than 24 hours from execution in 2007 when the Georgia Board of Pardons and Paroles issued a stay. The Board said in 2007 that it would not allow an execution to go ahead "unless and until its members are convinced that there is no doubt as to the guilt of the accused". Since then Troy Davis has faced two more execution dates, both in 2008, which were stayed by the courts.

Since 2007, three states in the USA have legislated to abolish the death penalty. When signing the abolitionist bills into law the three state governors all pointed to the risk of irrevocable error as a reason to support abolition. Since Troy Davis has been on death row, more than 90 prisoners have been released from death rows around the country on grounds of innocence. In each case, at trial the defendant had been found guilty beyond a reasonable doubt.

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Acknowledging the seriousness of the crime for which Troy Davis was sentenced to death;
- Noting that doubts persist in the case even after the federal evidentiary hearing in 2010;
- Pointing out that the Board acts as a failsafe against irreversible error, and recalling its statement in 2007 that it would not allow any execution to proceed where there was any doubt about the guilt of the prisoner;
- Pointing to the substantial evidence of the fallibility of the capital justice system;
- Calling on the Board to grant clemency and to commute the death sentence of Troy Davis.

PLEASE SEND APPEALS AS SOON AS POSSIBLE, AND BEFORE 23 MAY 2011 TO:

State Board of Pardons and Paroles
2 Martin Luther King, Jr. Drive, SE
Suite 458, Balcony Level, East Tower
Atlanta, Georgia 30334-4909, USA

Salutation: Dear Board members

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

In the past four years, three states in the USA – New Jersey, New Mexico and Illinois – have legislated to abolish the death penalty. Signing the bills in law, the three governors pointed to the risk of irreversible error in an imperfect system as a reason to support abolition. In 2007, New Jersey Governor Jon Corzine said that “government cannot provide a foolproof death penalty that precludes the possibility of executing the innocent”. In 2009, Governor Bill Richardson of New Mexico said that to carry out an irrevocable punishment, “we must have ultimate confidence – I would say certitude – that the system is without flaw or prejudice.” This, he added, “is demonstrably not the case”. In March 2011, Illinois Governor Pat Quinn said that the capital justice system was “inherently flawed”, and that it was “impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.” He said that, “as a state, we cannot tolerate the executions of innocent people because such actions strike at the very legitimacy of a government”.

More than 130 people have been released from death rows across the USA since 1976 on the grounds of innocence. Among other things the cases reveal the frequent unreliability of witness testimony. The Troy Davis case is one in which most of the witnesses who testified against the defendant have since retracted or contradicted their trial testimony in sworn statements. Nevertheless, a prisoner seeking to rely on revised witness testimony faces a high hurdle in the face of deference to the original jury verdict. At the June 2010 evidentiary hearing in US District Court, the Georgia prosecutor argued that “every court in the United States at every level has said, recantations are not favoured, they are looked at with great scepticism, they’re unreliable.” She concluded about the Troy Davis case: “This was their chance. The standard is extremely high..., they have not met it”.

One of the witnesses who appeared at the hearing was Benjamin Gordon, who in 2008 had signed a statement that an alternative suspect (a relative of his by marriage) had told him that he had shot Officer MacPhail. At the hearing, Benjamin Gordon asserted for the first time that he had actually seen this individual shoot the police officer. Benjamin Gordon, who had just turned 16 at the time of the crime, again alleged that he had been coerced by police into signing a statement implicating Davis. He said that he had not come forward sooner with the assertion about seeing who shot the officer out of fear, and that he had decided to “come in today and just let the truth be known”. Judge Moore concluded that Benjamin Gordon was “not a credible witness”.

The international community has agreed safeguards for capital cases in those countries that still retain the death penalty. One of these concerns the burden of proof on the death penalty state: “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”. The “extraordinarily high” burden of proof chosen by Judge Moore is less protective than this.

Amnesty International opposes the death penalty in all cases, unconditionally, regardless of questions of guilt or innocence, the crime in question, or the method of execution. There have been 1,246 executions in the USA since judicial killing resumed there in 1977, including 12 so far this year. Georgia currently does not have the drugs necessary to carry out a lethal injection after the Drugs Enforcement Administration of the US Department of Justice seized sodium thiopental in the possession of the state in order to conduct an investigation into how it was obtained. It is not known how long this may delay an execution date being set.

For further information on the Troy Davis case, see USA: ‘Unconscionable and unconstitutional’: Troy Davis facing fourth execution date in two years, May 2009, <http://www.amnesty.org/en/library/info/AMR51/069/2009/en>; USA: Less than ‘ironclad’, less than safe, 27 August 2010, <http://www.amnesty.org/en/library/info/AMR51/077/2010/en>

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